

LS 5566

**\*OGC Has Reviewed\***

8 March 1955

MEMORANDUM FOR: The Record

SUBJECT : Retroactive Crediting of Sick Leave Subsequent  
to Resignation [REDACTED] 25X1A2e

25X1A9a

1. The EE Division [REDACTED] requested our advice as to the propriety of retroactively crediting an employee with sick leave under the following circumstances.

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2. [REDACTED] after being on leave without pay from December 1953 to November 1954, resigned on 6 November 1954 without returning to duty. She now requests that she be credited with 22 days of sick leave she failed to use during the period of her confinement for child birth, 6 July - 28 July 1954.

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3. I advised [REDACTED] that in our opinion it would be legally objectionable to now credit [REDACTED] with her unused sick leave. This conclusion is supported by the decisions found in 27 Comp. Gen. 227, 231, also 27 Comp. Gen. 414, 415. At page 231, in discussing the Leave Act of 1936, the Comptroller General stated:

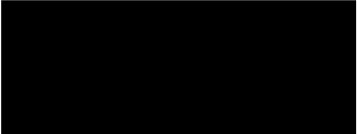
"...it is apparent that the purpose of the laws granting sick leave is to provide a means whereby an employee who otherwise would be in a pay status, but who is absent from work on account of sickness, may continue to remain in a pay status. Primarily, the granting of sick leave is the excusing on account of sickness of an employee from his normal duties without loss of pay. Necessarily, the statute presupposes that the employee but for his sickness, would be in a pay status and provides, in effect, that he shall not be removed from a pay status merely because of his sickness. . . . In view of the foregoing, it may be concluded that if there are not duties for the employee to perform and he is in a leave without pay status, it would be improper to terminate the non-pay status primarily for the purpose of placing the employee in a sick leave with pay status."

And at page 415 he ruled:

"...while it would have been within your discretion to have continued this employee on sick leave prior to his separation for any period that he was shown to have been incapacitated

for duty because of illness, the employee now having been finally separated, it would not be proper at this time to substitute sick leave for leave without pay." (Citing 27 Comp. Gen. 227).

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Office of General Counsel